

FILED  
COURT OF APPEALS  
DIVISION II

2016 DEC 22 AM 11:45

STATE OF WASHINGTON

BY   
DEPUTY

No. 48340-8-II

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON  
DIVISION II

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STATE OF WASHINGTON, Respondent

v.

DERRICK UNBEWUST, Appellant

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APPEAL FROM THE ORDER OF THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR  
WAHIAKUM COUNTY

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RESPONDENT'S BRIEF

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

1. The appellant failed to preserve, and actively waived, this issue by pleading guilty.
2. The appellant failed to preserve, and actively waived, this issue by pleading guilty.
3. The appellant failed to preserve, and actively waived, this issue by not only pleading guilty, but stipulating to the exceptional sentence now complained of.

## **II. STATEMENT OF THE CASE**

Since the appellant pled guilty, this case was not tried. The State takes its statement of the facts from the police report attached to the state's memorandum on suppression issues, RP 34, which the court seemed generally to accept in its memorandum opinion. RP 41.

In the late evening of November 26, 2013, Washington State Troopers Macomber and Hillstrom were parked together and

conversing with one another at a gas station near Cathlamet, in Wahkiakum County. RP 43. The two of them saw a car drive by and noticed it had a defective headlight; and Trooper Macomber pulled it over. RP 43, 45. The driver was the current appellant, Derrick Unbewust, but he introduced himself as Steven J. Hackett. RP 43. His eyes were bloodshot and droopy. Id. He was unable to provide Hackett's social security number or photo ID, so a suspicious Macomber asked Hillstrom to assist him with the stop. Id. Hillstrom contacted the appellant and, following up on the appellant's bloodshot eyes and noting that the appellant was notably restless and fidgety, elicited information from the appellant that he had smoked marijuana no more than five hours previously and thought he might be impaired – though the officer suspected the appellant had also used methamphetamine. RP 45. The troopers then asked him out of the car. RP 43. When Macomber asked him if he had any weapons, the appellant said he had a knife, so the officers patted him down and found a switchblade. Id. After performing field sobriety tests, the appellant was arrested for

DUI, and during the arrest the officers found a baggie of methamphetamine on his person along with a payroll check that was not made out to Steven Hackett, who the appellant was still representing himself to be. Id.

While this was going on, Trooper Hillstrom noted that the passenger – later determined to be Tina Squier, appellant's wife and co-defendant – frantically stuffing something under the passenger seat. RP 45. Based on this and the circumstances thus far, the troopers requested and received a search warrant for the vehicle. RP 43. A tremendous amount of probative information was discovered, idv, which took some time to process.

While this was going on, the appellant was charged with DUI and the possession of the methamphetamine on his person. CP 3. At his first appearance, he kept up the charade of being Steven Hackett. See, e.g., his request for court-appointed attorney, which he filled out and signed in the name of Mr. Hackett (who, by

the way, is a real person). CP 27. But after that deception was uncovered and the items discovered in the search of the vehicle were more thoroughly investigated, the State was able to charge the appellant by amended information – an amended information the appellant has not designated and which may come as news to the court. CP 29.

The appellant and his wife were making their living (and earning the intoxicants by which the appellant first brought himself to the attention of the troopers) by forging checks and stealing identities using papers, equipment, and computers the officers found in the appellant's vehicle. This resulted in a ten-count amended information which, in addition to charging the methamphetamine and DUI counts under the appellant's correct name, also charged two counts of identity theft in the second degree, one count of possession of instruments of financial fraud, and five counts of unlawful possession of payment instruments. CP 29.



(The appellant has made many unsworn statements in his brief; the State asks they be disregarded, but if the court pay them any mind, then allow the State this one: in the trove of evidence the troopers discovered were grounds for many, many more felony counts.)

Because of the vital importance of the search warrant of which the appellant now complains, the warrant's legality was heavily litigated below. The State's and appellant's memoranda are designated as proof of this fact rather than because the merits are of any relevance to the court. During the process of motions and bearing in mind the possible consequences if the appellant lost, detailed plea negotiations took place. The parties joined in a request to set over the trial date because the negotiations hinged on a decision on the motions; the motion and affidavit to continue references the plea negotiations. CP 59. The court decided the motion on May 2, 2014. CP 62. A plea almost immediately followed, on May 5. CP 64.

This court may be hearing about the appellant's plea of guilty for the first time in these papers, just as it may have been unaware of the ten-count identity theft charging document under which the appellant labored when he was deciding whether to plead guilty. His Statement of Defendant on Plea of Guilty and Judgment and Sentence are at CP 64 and 75, and the court's minutes showing he was present at the plea and sentencing are at CP 87.

As the court can see, the appellant pled guilty to six felony counts in return for the dismissal of four. The exceptional sentence the appellant now complains of was specifically bargained for, along with a proviso that if the appellant was sentenced to more than 36 months in prison, he could appeal any sentence over that amount of time.

### III. ARGUMENT

Note that although the appellant appears to have reached this court through a series of contretemps regarding his attempts to have his fines reduced, now that he has the opportunity to argue before this court, he makes no argument regarding his legal-financial obligations. Issues that are supported by neither citation to authority nor argument are waived; this court will not consider them. State v. Marintorres, 93 Wash. App. 442, 452, 969 P.2d 501, 506 (1999). We proceed on the issues presented, which attack the search warrant and the appellant's sentence.

Or rather, we do not proceed on them.

The first issue we must decide is whether [defendant] may appeal his conviction. We must address that question because the record contains a plea agreement signed by [defendant] and the deputy prosecuting attorney, which suggests that [defendant] pleaded guilty... If, indeed, he did enter a guilty plea, then he would not be entitled to appeal the denial of any pretrial motions. A guilty plea generally waives the right to appeal. State v. Wiley, 26 Wn.App. 422, 425, 613 P.2d 549, review denied,

94 Wn.2d 1014 (1980). A guilty plea is "more than an admission of conduct; it is a conviction" and "nothing remains but to give judgment and determine punishment." Boykin v. Alabama, 395 U.S. 238, 242, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969).

State v. Olson, 73 Wn.App. 348, 353, 869 P.2d 110, 113 (1994).

Generally, a guilty plea waives the right to appeal. That right may be waived when a plea agreement is made intelligently, voluntarily, and with an understanding of its consequences. A strong presumption of voluntariness exists when a defendant completes the plea form, and admits to reading, understanding, and signing it. That presumption is "well nigh irrefutable" when a trial court orally inquires about voluntariness.

State v. Smith, 87 Wn.App. 293, 296, 941 P.2d 704, 706 (1997), citing State v. Perez, 33 Wn.App. 258, 261-62, 654 P.2d 708 (1982).

Here, the appellant negotiated a plea settlement and pled guilty to fewer than the number of charged crimes. Furthermore, the State did not pursue any additional counts it may have been entitled to charge, and the appellant's exposure on the high end of exceptional sentencing was limited to 36 months. He went before the court in person, and the court asked him whether his plea was

made freely and voluntarily, and the appellant said it was. (The RP cite is unavailable as the author writes this, but the report of proceedings of the hearing has been arranged to be part of the record and the State trusts it will arrive in due course.)

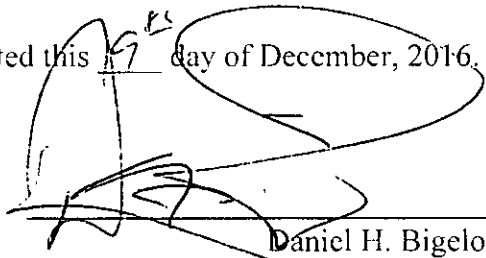
The appellant does not even attempt to shoulder the burden of disproving the voluntariness and finality of his guilty plea. His guilty plea prohibits his appeal; this is “well nigh irrefutable,” and rather than attempt to refute it, appellant has devoted considerable ingenuity to deceiving this court into thinking he didn’t plead guilty at all – and that he was only charged with DUI and methamphetamine possession, rather than a raft of serious financial crimes.

#### **IV. CONCLUSION**

Insofar as the appellant’s ability to get this far in the process with an appeal so clearly meritless is the fault of the

State's difficulty until recently in communicating with the Court of Appeals, the State apologizes. Insofar as this appeal has come so far on the strength of the appellant's deceitful citation to the record and his naïve attempt to bait-and-switch this court into reaching a search and seizure issue after feinting in the direction of a Blazina challenge, it is the appellant who is culpable. In any event, this appeal should go no farther.

Respectfully submitted this 9<sup>th</sup> day of December, 2016.




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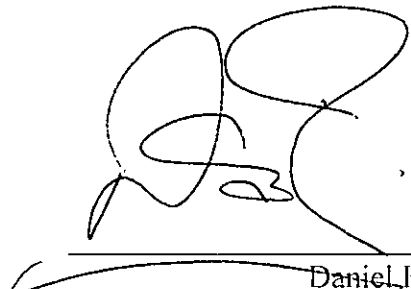
BY \_\_\_\_\_  
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CERTIFICATE

I certify that I mailed a copy of the foregoing Respondent's Brief to the following addresses, postage prepaid, on December 16<sup>th</sup>, 2016.

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